

BEFORE THE
Federal Communications Commission
 WASHINGTON, D.C.

IN THE MATTER OF:

Amendment of 47 C.F.R. §73.202(b)
Table of Allotments
FM Broadcast Stations
(Johannesburg and Edwards, CA)

To: The Chief, Mass Media Bureau

) MM DOCKET NO. 99-239

) RM-9658

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

DECLARATION OF NO CONSIDERATION

Comes now **Adelman Communications, Inc.** ("Adelman"), by Counsel, and pursuant to Section 1.420(j) of the Commission's Rules, hereby respectfully submits the attached "Declaration of Robert Adelman" in response to the "Contingent Withdrawal of Petition for Reconsideration filed by Amaturio Group of L.A., Ltd." ("Amaturio") dated April 5, 2001. In connection therewith, Adelman states as follows:

1. On August 18, 2000, the Commission through delegated authority, issued a *Report and Order*¹ in this proceeding amending Section 73.202(b) of the Rules, FM Table of Allotments, by Deleting Channel 280B1 from Johannesburg and Adding Channel 280A to the community of Edwards, California. The *Report & Order* was issued pursuant to a *Notice of Proposed Rule Making* released July 6, 1999 (DA-99-239) requested by Adelman in a petition for rule making.

2. On or about September 18, 2000, Amaturio, a "party" in the rule-making proceeding, filed a Petition for Reconsideration, arguing that the Staff erred in approving the reallocation of Channel 280B1 from Johannesburg to 280A in Edwards, California prior to considering Amaturio's own proposal in MM Docket 99-329. While conceding that Amaturio's proposals were *not* mutually

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¹ DA 00-1902, released August 18, 2000 ("Report & Order").

exclusive with the Edwards, California proposal, Amaturio had argued that its proposal might be precluded if Adelman's was approved first.²

3. On March 9, 2001, The Commission released its *Report and Order* in MM Docket 99-239 granting Amaturio's proposals. Public notice was effectuated in the FEDERAL REGISTER on March 28, 2001.³

4. On April 5, 2001, Amaturio submitted a "Contingent Withdrawal of Petition for Reconsideration filed by Amaturio Group of L.A., Ltd." in this Docket. Amaturio noted that the Commission has granted its reallocation proposals in MM Docket 99-329, and therefore the basis for Amaturio requesting reconsideration in the instant Docket (MM 99-239) was moot. Amaturio therefore sought leave to withdraw its petition for reconsideration to be made effective at such time as the *Report and Order* in MM Docket No. 99-329 became *final*. Amaturio attached the Declaration of its principal, Joseph Amaturio, attesting to the fact that Amaturio has not received nor been promised to receive any ponderation in exchange for the voluntary withdrawal of its petition for reconsideration in MM Docket 99-239.

5. In compliance with Section 1.420(j) of the Rules (47 CFR §1.420(j)), attached hereto is the Declaration of Robert Adelman, principal of Adelman, who states that Adelman has neither paid nor promised to paid to Amaturio any consideration in exchange for the withdrawal of Amaturio's Petition for Reconsideration. Mr. Adelman further states that he believes that acceptance of the withdrawal of Amaturio's Reconsideration Petition will serve the public interest by bringing earlier first local service to the community of Edwards, California, and providing new service to certain underserved areas identified by Adelman in his Comments in MM Docket 99-239.⁴

² Amaturio offered no support for this paranoid delusion. In fact, Amaturio argued in the Docket 99-239 Rule Making proceeding that it believed that Adelman's proposal would not impact at all on the proposal of Amaturio. That being the case, one wonders at the motivation of Amaturio for filing its "Counterproposal" in MM Docket 99-239 and now this Petition for Reconsideration of the *Report & Order*.

³ 66 Fed. Reg. 16882 (March 28, 2001).

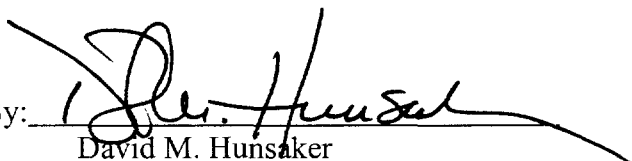
⁴ It should also be noted that the public interest will also be served by conserving Commission resources that might otherwise be devoted to drafting a definitive ruling on the merits of Amaturio's petition.

6. Inasmuch as the basis for Amaturò's Reconsideration petition is now moot, the Commission having granted Amaturò's proposals in MM Docket 99-329, Adelman renews its request that the Amaturò petition for reconsideration be Dismissed.⁵

WHEREFORE, the above premises considered, Adelman respectfully urges that the "Contingent Withdrawal of Petition for Reconsideration filed by Amaturò Group of L.A., Ltd." be ACCEPTED, and that Amaturò's Petition for Reconsideration filed by Amaturò Group of L.A., Ltd. be DISMISSED, with prejudice, upon the final order date in MM Docket 99-329.

Respectfully submitted,

ADELMAN COMMUNICATIONS, INC.

By: 
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April 10, 2001

⁵ Adelman notes that Amaturò has asked that the dismissal be made effective upon the *Report and Order* in MM Docket 99-329 (Amaturò's proceeding) becoming *final*, as defined by FCC rules. Adelman has no objection to such condition, so long as when Amaturò's petition in this proceeding is dismissed, it is done so *with prejudice* against any re-filing.

DECLARATION OF ROBERT ADELMAN

1. My name is Robert Adelman. I am the principal officer, director and shareholder of Adelman Communications, Inc. ("Adelman") Licensee of KEDD (FM), Johannesburg, California (Fac. No. 457).

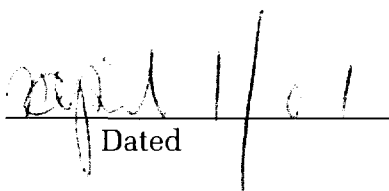
2. On August 18, 2000 the Commission released a *Report and Order* in MM Docket 99-239 modifying the License of KEDD to specify operation on Channel 280A in Edwards, California (DA 00-1902). Amaturio Group of L.A., Ltd. ("Amaturio") filed a petition for reconsideration of that action, which is presently pending.

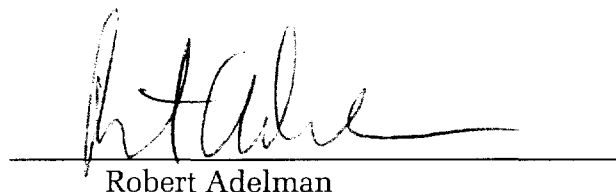
3. It is my understanding that Amaturio has filed or will file a "Contingent Withdrawal of Petition for Consideration" seeking Commission consent to withdraw its petition for reconsideration contingent upon the Commission's *Report and Order* in MM Docket 99-329 (DA 01-631, released March 9, 2001) granting Amaturio's proposed changes to the FM Table of Allotments becoming a final order.

4. In compliance with Section 1.420(j) of the FCC Rules (47 CFR §1.420(j)), this is to state that I have not paid nor promised to pay Amaturio or any principal thereof any consideration in exchange for Amaturio's withdrawal of its petition for reconsideration.

5. Acceptance of Amaturio's Contingent Withdrawal of Petition for Reconsideration and proceeding thereafter to make the action taken in MM Docket 99-239 final would be in the public interest. It would provide the community of Edwards, California with first local service, as well as provide additional service to a number of underserved areas in the vicinity of Edwards, as set forth and described in Adelman's Comments in MM Docket 99-239.

6. Under penalty of perjury, I hereby declare that the foregoing facts are true and correct to the best of my knowledge, information, and belief, except for those facts which are a matter of official notice, and as to those, I believe them to be true.


Dated


Robert Adelman

CERTIFICATE OF SERVICE

I, Sharon L. Hinderer, Secretary in the Law Firm of **Putbrese Hunsaker & Trent, P.C.**, hereby certify that I have on this 10th day of April, 2001, sent, by United States Mail, postage prepaid, a true copy of the foregoing **"Declaration of No Consideration"** upon the following:*

*John A. Karousos, Chief
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(Counsel for Amaturo Group of LA, Ltd)

*Via Hand Delivery

Sharon L. Hinderer
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